

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

KENNARD GERALD JOHNSON, aka
KENNARD GERLARD JOHNSON,

Petitioner,

v.

DOMINGO URIBE, JR., WARDEN,

Respondent.

(JEM)
No. ED CV 10-164-GW (RC)

ORDER ADOPTING REPORT AND
RECOMMENDATION OF UNITED
STATES MAGISTRATE JUDGE


Pursuant to 28 U.S.C. Section 636, the Court has reviewed the Petition and other papers along with the attached Report and Recommendation of United States Magistrate Judge Rosalyn M. Chapman, as well as Petitioner's and Respondent's objections, and has made a de novo determination. In doing so, this Court has read and considered the Supreme Court's recent decision in Premo v. Moore, ___ U.S. ___, 2011 U.S. LEXIS 910 (January 19, 2011), and Harrington v. Richter, ___ U.S. ___, 2011 U.S. LEXIS 912 (January 19, 2011).

IT IS ORDERED that (1) the Report and Recommendation is approved and adopted; (2) the Report and Recommendation is adopted as the findings of fact and conclusions of law herein; (3) the Court determines that Petitioner's defense counsel in San Bernardino County Superior Court Case No. FWV035414 rendered ineffective assistance in violation of petitioner's Sixth Amendment rights when he failed to advise Petitioner he was pleading guilty to an unlawful sentence, and Petitioner was

1 prejudiced by his attorney's deficient performance; and (4) Judgment shall be entered
2 granting Petitioner's Habeas Corpus Petition, and requiring Respondent to release
3 Petitioner within 120 days of the entry of Judgment unless the San Bernardino County
4 Superior Court, within that time period, resentsences Petitioner to a lawful sentence.

5 IT IS FURTHER ORDERED that the Clerk shall serve copies of this Order, the
6 Magistrate Judge's Report and Recommendation and Judgment by the United States
7 mail on Petitioner.

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9 Dated: This 25th day of January, 2011.

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12 GEORGE H. WU
13 United States District Judge
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